

Exhibit 2

COPY

1

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK
-----X4 ORCHARD HOTEL, LLC,
5

Plaintiff,

6 - against -
7Index No.
850044/20118 D.A.B. GROUP LLC, ORCHARD CONSTRUCTION LLC,
9 FLINTLOCK CONSTRUCTION SERVICES, LLC, JJK
10 MECHANICAL INC., EDWARD MILLS & ASSOCIATES,
11 ARCHITECTS PC, CASINO DEVELOPMENT GROUP,
12 INC., CITYWIDE CONSTRUCTION WORKS INC.,
13 EMPIRE TRANSIT MIX INC., MARJAM SUPPLY CO.,
14 INC., ROTAVELE ELEVATOR INC., SMK
15 ASSOCIATES INC., FJF ELECTRICAL CO. INC.,
16 CITY OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE,
LEONARD B. JOHNSON, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD, BROOKLYN
FEDERAL SAVINGS BANK, STATE BANK OF TEXAS,
JOHN DOE #1 THROUGH JOHN DOE #100, the
last 100 names being fictitious and unknown
to plaintiff, the persons, or parties
intended being the tenants, occupants,
persons or corporations, if any, having or
claiming an interest in or lien upon the
premises described in the complaint,17 Defendants.
-----X
1819 228 East 45th Street
20 New York, New York
2122 January 7, 2013
23 10:15 a.m.
24

25 EXAMINATION BEFORE TRIAL of JOANNE B. GALLO,

a Non-Party Witness in the above-entitled action, at the
above-mentioned place, before John Pisano, a Notary

1
2 Public of the State of New York, taken pursuant to
3 Article 31, Section 3101 et seq. of the C.P.L.R., and
4 pursuant to Judicial Subpoena and Notice Of Deposition
5 Upon Oral Examination.

6 *** *** ***
7
8

A P P E A R A N C E S:

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12 and Defendant, ORCHARD CONSTRUCTION, LLC
13 909 Third Avenue - 27th Floor
14 New York, New York 10022

15 BY: BRETT D. DOCKWELL, ESQ.

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20 BY: WILLIAM G. WALLACE, ESQ.

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23 CONSTRUCTION SERVICES, LLC
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BY: LARRY HOLLANDER, ESQ.

(Continued...)

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2 A P P E A R A N C E S Continued:

3

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10 BY: TARA B. MULROONEY, ESQ.

11

12 O'REILLY, MARSH & CORTESELLI, P.C.
13 Attorneys for Non-party Witness,
14 JOANNE B. GALLO
15 222 Old Country Road - 2nd Floor
16 Mineola, New York 11501

17

18 BY: JAMES G. MARSH, ESQ.

19

20

21

22 ALSO PRESENT:

23

24

25 BEN ZHAVIAN

26 *** * ***

27

28

29

30

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(Whereupon, the reporter premarked a copy of Judicial Subpoena and Notice Of Deposition Upon Oral Examination, comprising two pages, as Defendant's Exhibit A, for identification as of this date.)

J O A N N E B. G A L L O , a non-party witness
herein, having been first duly sworn
by a Notary Public of the State of New
York, was examined and testified as
follows:

EXAMINATION BY MR. WALLACE:

Q. May I have your full name for the record,
please?

A. Joanne B. Gallo.

Q. Where do you currently reside?

A. 11 Fifth Avenue, New York, New York 10003.

20 Q. Ms. Gallo, my name is William Wallace. I
21 represent D.A.B. Group LLC in connection with this
22 matter. I'm going to be asking you a series of questions
23 this morning and showing you some documents.

24 If at any time you don't understand my
25 question, please let me know and I'll attempt to rephrase

1 J. Gallo

2 it goes smoothly, in a year and a half we'll be
3 celebrating a new hotel?

4 A. Yes (referring).

5 Q. Do you know what he's referring to when he
6 refers to that time frame of a year and a half?

7 A. No.

8 Q. Did you ever discuss with Mr. Rosenfield
9 where he got the year and a half from?

10 A. I don't recall (referring).

11 Q. In your review of the legal docs, did you
12 have an occasion to review the contract between Flintlock
13 and D.A.B. Group?

14 A. I know I saw it. Did I do a thorough review?
15 No.

16 Q. When is it that you saw it? Would it be
17 that time when you looked at the legal docs?

18 A. When I looked at the legal docs and you see
19 that you've got a construction contract and a building
20 loan agreement and a mortgage.

21 Q. And a general contractor?

22 A. Yes.

23 Q. When you did that legal doc review, were you
24 aware of the term of the loan?

25 A. It matured March 1, 2011.

1 J. Gallo

2 there?

3 A. That we were concerned about the BSA, that
4 the superstructure needed to be completed by mid November
5 of 2010 (referring).

6 Q. At the time you sent this e-mail, you were
7 then aware of the fact that the loan termed out on March
8 1st, 2011; correct?

9 A. Right (referring).

10 Q. When you sent this e-mail, did you have any
11 idea as to when the projected schedule was for completion
12 of the entire project?

13 A. We were totally focused on the building of
14 the superstructure (referring).

15 Q. So that the completion date of the project
16 was not an important issue to you at that time?

17 MR. MARSH: Objection to the form, but
18 you can answer it if you can.

19 A. As I said, we were concerned about the
20 superstructure (indicating).

21 Q. And not so much about completion of the
22 project? At this time (indicating).

23 A. The superstructure was the critical piece.

24 Q. Ms. Gallo, did there come a point in time in
25 your tenure, first as a consultant and later as a Senior

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1 J. Gallo

2 VP, that Brooklyn was looking to sell some of these
3 commercial real estate loans?

4 A. Yes.

5 Q. When did that become important to you in the
6 work-out department?

7 A. We started our note sale project, probably
8 started in February of 2011.

9 Q. What was the impetus for that?

10 A. We were under -- we had to shrink the bank
11 and sell problem assets.

12 Q. When you say you had to, this came from a
13 higher source?

14 A. A much higher authority, yes.

15 Q. And was that OTS?

16 A. That was the board bank management and OTS.
17 It was to reduce the level of problem assets however you
18 can.

19 Q. And the problem assets of the bank at that
20 time were primarily commercial real estate loans?

21 A. Commercial real estate loans.

22 Q. And was there a list or schedule of the ones
23 that were considered problem assets in February of 2011?

24 A. Yes.

25 Q. The compilation of that list, was that your

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1 J. Gallo

2 responsibility initially or your group's responsibility?

3 A. Yes.

4 Q. And that came down from the board directly
5 to you; correct?

6 A. The list?

7 Q. No, no, the mandate --

8 A. The mandate to get rid of the problem assets
9 was mandated by the board and by the OTS to reduce the
10 level.

11 Q. And who was in charge of initially compiling
12 the list of those problem assets?

13 A. We maintained a list of all loans that were
14 criticized or classified.

15 Q. And was the Allen Street Hotel loan one of
16 the ones that was on that list?

17 A. Yes.

18 Q. And how would a loan get on that list? What
19 were the criteria that would put it on the list?

20 A. If it was criticized or classified. We also
21 had performing loans on the list.

22 Q. Let me start with criticized.

23 Is that a term of art, criticized?

24 A. Criticized, yes.

25 Q. Can you define that?

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2

A. But it's a special mention loan.

3

Q. And what does that mean?

4

A. That means it is a loan that has certain areas of weakness where the ultimate repayment is questionable.

7

Q. I think you also referred to classified?

8

A. Classified are substandard loans.

9

Q. What's the criteria to determine that a loan is substandard?

A. It matured, it stopped paying, the collateral value is not worth the loan value.

13

Q. You also had, you said, performing loans?

14

A. Performing loans, um-hmm.

15

Q. How would a performing loan get on that list?

17

A. If we felt that there was value there and that perhaps someone would be interested in buying a suite -- a package of loans, one being performing, one being non-performing.

21

Q. In February of 2011, the Allen Street loan made this list; correct?

23

A. Yes.

24

Q. The general list. And do you recall, as you sit here today, for what reason it was put on this list?

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2 Was it a criticized loan, a classified loan or one of
3 these performing loans that you thought you could get
4 value for?

5 A. We had some concerns about it, particularly
6 with respect to the ability to continue the construction
7 and the payments that had been made to Flintlock.

8 Q. What were your concerns about the ability to
9 complete the construction?

10 A. We understood that Flintlock had -- that
11 some moneys had been withheld from Flintlock in terms of
12 their payment under the advances.

13 Q. Was that addressed with Flintlock?

14 A. That was addressed with Ed Mills, Flintlock,
15 Nick Zagami. Once again, I don't recall if Ben was on
16 the phone call or not (indicating), but we did meet about
17 the fact that moneys had been withheld.

18 Q. What was the sum and substance of those
19 conversations?

20 A. I believe the amount was approximately
21 \$300,000 that was owed to Flintlock under construction
22 advances that we had made that they had not received.

23 Q. And did you take this up with D.A.B. as
24 well?

25 A. Yes. That's why I said Nick Zagami was

1 J. Gallo

2 there, I don't recall if Ben was on the phone or at the
3 meeting at the time.

4 Q. And how did D.A.B., for lack of a better
5 word, whether it was Nick or Ben, respond?

6 A. They subsequently agreed to pay Flintlock
7 the amount of the moneys that had been originally
8 withheld.

9 Q. And did that affect whether or not they were
10 on the list to sell?

11 A. Well, you can't do that. That was not
12 something that was ever contemplated in the agreement;
13 that there would be withholdings. So we were concerned
14 about, I can't say in a legal term, the legality, but
15 certainly that was never supposed to have happened.

16 Q. And did there come a point in time when the
17 list was published to solicit purchasers?

A. We have what you call a virtual data room.

19 Q. And in that room are the --

20 A. Names and locations of properties were
21 listed for sale and if a person wanted to look at the,
22 what loans were on there, they would sign a
23 confidentiality agreement and they would have to identify
24 which properties they were interested in looking at.
25 They also had to provide proof of liquidity. And if they

1 J. Gallo

2 A. We got a response that it was okay to sell
3 the note.

4 Q. Now, at the time that you made a request to
5 extend the maturity date, did you simultaneously --

6 A. No.

Q. -- ask permission to sell?

8 A. No.

9 Q. Did you make a separate request to sell the
10 note?

11 A. Yes.

Q. Was it done at the same time?

13 A. No.

14 Q. When was the request to sell the note made
15 from OTS?

16 A. I don't recall.

17 Q. Was it before or after the request to extend
18 the maturity date?

19 A. It would have been after.

20 Q. Prior to requesting permission to sell the
21 note, had you had a response from your request to extend
22 the maturity date?

23 A. No.

24 Q. To your knowledge, did Brooklyn ever obtain
25 a response to their request to extend the maturity date?

1 J. Gallo

2 A. No.

3 Q. How long after the request for an extension
4 did you make your request to sell the note?

5 A. I don't recall.

6 Q. Did you have any discussion with Mr. Aviram
7 or anybody else at Maverick regarding your request to
8 extend the maturity date?

9 A. I don't recall.

10 Q. Did you exchange any e-mails with Mr. Aviram
11 regarding the possibility of extending the maturity date
12 of the note?

13 A. I don't remember.

14 Q. Would you have any records which would
15 reflect whether or not you had any conversation or
16 correspondence with Mr. Aviram or anybody at Maverick
17 regarding the extension of the note, the maturity date of
18 the note?

19 A. Could you rephrase that?

20 Q. Sure. Do you personally have any records
21 which would indicate any conversations or correspondence
22 you had with anybody at Maverick regarding your request
23 that OTS permit the extension of the maturity date?

24 MR. MARSH: Objection to the form of
25 the question.

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2 I'll refer to them as either Flintlock or FCS.

3 A. Okay.

4 Q. Thank you.

5 I'd like to clarify some of your testimony
6 with Mr. Wallace concerning --

7 MR. MARSH: Objection to that
8 statement.

9 You can ask her questions and you'll
10 get answers.

11 Q. -- regarding the timing on the request for
12 an extension of the loan.

13 If I understood your testimony correctly,
14 please tell me if this is accurate: Sometime prior to
15 March of 2011, the maturity date of the loan, Brooklyn
16 requested that OTS approve an extension of the loan? Did
17 I understand that correctly?

18 A. Yes.

19 Q. And if I understood correctly, you stated
20 that there is a procedure with the loan committee over at
21 Brooklyn to make that recommendation to OTS; is that
22 correct?

23 A. I make the recommendation to the loan
24 work-out committee of the board and if they approve it,
25 then I send in information to the OTS.

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J. Gallo

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Q. Do you recall when that request went from Brooklyn to OTS to extend the loan?

4

A. No, not specifically.

5

Q. General procedures of Brooklyn, based on your experience with the company, when would a request for an extension of a loan generally be made relative to the maturity date?

9

A. Prior to the maturity date.

10

Q. Do you have a more specific answer for me? Six months before, three months before, a day before? Based on your experience as to general procedure for Brooklyn.

14

A. I could only speak to my experience there, which was probably anywhere from 30 to 60 days.

16

Q. Do you have any recollection that that procedure was not followed with respect to the request for the extension of the D.A.B. loan?

19

A. That would have been followed.

20

Q. So, if the loan matured on March 7th of 2011 --

22

A. March 1.

23

Q. I'm sorry, March 1, thank you. March 1 of 2011, then calculated against the 30 to 60 days request time, that would have been made generally sometime after

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1 J. Gallo

2 A. No.

Q. But if it was made, it had to go through you?

A. It had to go through me.

5 Q. Thank you.

6 Can you explain to me why you, on behalf of
7 Brooklyn, would have requested OTS permission or consent
8 to sell a note while a previous decision had been made to
9 request from OTS an extension of the note?

10 MR. MARSH: Objection to the form of
11 the question.

12 You can answer it.

13 A. As I previously indicated, we became
14 concerned when we found out that certain funds that
15 should have been paid to Flintlock were withheld and
16 therefore, we felt that if there was another alternative,
17 if there was somehow else that we could probably, you
18 know, reduce this potential problem in terms of all of
19 our assets, that it was in our best interests to do so.

20 Q. Did you also determine at that time that
21 that action would, without question, result in a default
22 of the note by the borrower?

23 MR. MARSH: Objection to the form.

24 Go ahead, you can answer.

25 A. The notes matured March 1.

1 J. Gallo

2 A. No.

3 Q. It does not. You've answered the question.

4 Could Mr. Aviram be correct, that the, if
5 you will, more accurate time frame in which he first
6 contacted Brooklyn or yourself with respect to purchasing
7 possible notes in fact occurred in December of 2010?

8 A. That's possible.

9 Q. Now, you came to the bank in June of 2010 as
10 a consultant. Did I understand that correctly?

11 A. Yes.

12 Q. Did you have involvement with the approval
13 by Brooklyn of Flintlock's construction contract with
14 your borrower?

15 A. No.

16 MR. DOCKWELL: Objection; it assumes
17 facts not in evidence.

18 Q. Did you have any involvement with the
19 approval of the Flintlock contract prior to August of
20 2010?

21 MR. DOCKWELL: Objection. Same
22 objection.

23 A. No.

24 Q. Did there come a time when you received a
25 copy or had an opportunity to review the Flintlock

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1 J. Gallo

2 Q. Did it extend the maturity date of both
3 loans or just of one loan?

4 A. Both (referring).

5 Q. Now, putting aside this particular Loan
6 Modification Agreement, during your tenure at Brooklyn
7 Federal were you involved in loan extensions?

8 A. Yes.

9 Q. Did Brooklyn Fed have certain procedures for
10 extending loans?

11 A. We would go to the loan work-out committee
12 and request an extension and then they would go to the
13 OTS and request their non-object.

14 Q. And if the loan work-out committee and OTS
15 both approved or did not object to an extension of the
16 loan, did the bank then document that extension in a
17 formal written document?

18 A. Yes.

19 Q. Returning to Plaintiff's Exhibit 1, if you
20 could please look at page 2, and paragraph 4.

21 A. (Referring).

22 Q. I'll just paraphrase this. The first
23 sentence reads, "The definition of maturity date contained
24 in the note and mortgage as modified by this agreement
25 shall hereby be rendered null and void and completely

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1 J. Gallo

2 extensions because it's within the terms of this
3 agreement (indicating).

4 Q. So, let me clarify then, if there's an
5 extension that varies the terms of the loan documentation,
6 would that extension be --

7 A. That would be written in a formal document.

8 Q. In a document similar in sum and substance
9 to this Loan Modification Agreement?

10 A. Yes.

11 Q. And would such a document, a Loan
12 Modification Agreement, typically be executed by the
13 Senior Vice President and Chief Lending Officer of
14 Brooklyn Federal?

15 A. If it was a loan that was within his
16 responsibility after it had been approved, then he would
17 have done it. If it was within my responsibility, then I
18 would have signed it.

19 Q. We had marked earlier today the Estoppel
20 Certificate, which is Defendant's Exhibit C.

21 THE WITNESS: This is the nine sixty?

22 MR. MARSH: Yes.

23 A. Okay (referring).

24 Q. You testified earlier today that you had
25 seen this document before today; is that correct?

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1 J. Gallo

2 A. Yes, I do (referring).

3 Q. Did the bank ever agree with D.A.B. Group
4 and Flintlock that the loans would be extended "at least
5 for the term of the general contract"?

6 A. Not to my knowledge.

7 MR. HOLLANDER: Could we just
8 establish for the record whether or not the
9 witness is responding based on personal
10 knowledge or on her understanding of the
11 bank's position? Particularly in light of
12 the fact that she has already testified she
13 had no involvement in the approval of the
14 Flintlock contract at the time of the
15 Estoppel Certificate.

16 MR. MARSH: Is this a question,
17 statement or what?

18 MR. DOCKWELL: I'm sorry, I'm
19 confused. I'll break it down.

20 Q. To your knowledge, did the bank ever agree
21 with D.A.B. Group and Flintlock that the loans would be
22 extended for "at least for the term of the general
23 contract"?

24 A. Not to my knowledge.

25 Q. To your knowledge, did the bank ever agree

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1 J. Gallo

2 Q. Moving ahead to 2010 and 2011, did you ever
3 tell Mr. Zhavian or anyone else at D.A.B. Group that the
4 loans could be extended without a formal written Loan
5 Modification Agreement?

6 A. No.

7 Q. Did you ever tell Mr. Zhavian or anyone at
8 D.A.B. Group that the loans could be extended for an
9 indefinite period of time?

10 A. No.

11 Q. Did you ever tell Mr. Zhavian or anyone else
12 at D.A.B. Group that the loans could be extended without
13 a signed agreement by Brooklyn Federal Savings Bank?

14 A. No.

15 Q. I believe you testified that you were present
16 at meetings that were attended by a representative of
17 Flintlock; is that correct?

18 A. Yes.

19 Q. Do you recall who that individual was?

20 A. I don't offhand.

21 Q. Did you ever tell anyone from Flintlock that
22 the loans would be extended beyond March 1st of 2011?

23 A. No.

24 Q. Earlier, you testified that an extension of
25 the loans here needed to be approved by the Office of

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1 J. Gallo

2 Thrift Supervision; is that correct?

3 A. That is correct.

4 Q. Did you inform Mr. Zhavian that OTS approval
5 was needed to extend the maturity date of the loans?

6 A. Absolutely.

7 Q. Do you recall what, if anything, Mr. Zhavian
8 said in response when you told him that OTS approval was
9 needed to extend the loans?

10 A. I don't recall.

11 Q. Earlier, you had testified that there was a
12 point in time at which the bank was concerned that
13 proceeds from the building loan were not being applied to
14 construction as they were intended; is that correct?

15 A. That the proceeds from the building loan,
16 the construction advance, was not -- they were
17 withholding, and Flintlock was short about 300,000 from
18 what it was owed.

19 Q. And there were withholdings by whom?

20 A. Ben Zhavian. Or D.A.B.

21 Q. How did you become aware that Mr. Zhavian
22 had not been fully advancing funds to Flintlock?

23 A. To the best of my recollection, we were in a
24 meeting, discussing the status of the loan, when the
25 gentleman from Flintlock said that he hadn't been fully

1 J. Gallo

2 paid.

3 Q. Did the bank take any precautions after that
4 point to ensure that Flintlock was paid future advances?

5 A. Well, we had previously taken -- When we had
6 the checks made out to both Flintlock and D.A.B., it was
7 to avoid that very specific problem. And then when, as I
8 said, after January 1 we said, okay, then we could just
9 make them out to D.A.B., and then we found out that there
10 had been the \$300,000 withheld and then there were no
11 further advances because by that time the loan matured.

12 Q. I might have asked this, so perhaps you
13 answered it. Let me just clarify.

14 Flintlock informed the bank that Mr. Zhavian
15 was not fully advancing loan proceeds; is that correct?

16 A. Yes.

17 Q. Do you recall if Flintlock submitted any
18 requisition requests after informing the bank that it was
19 not receiving loan proceeds?

20 A. I'm not sure exactly what the timing was. I
21 know there was a req in February and I know we had a
22 meeting in February. And there was another req that I
23 think was work done in February but wasn't presented to
24 us in March and the loan matured and we couldn't advance
25 anyway.

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1 J. Gallo

2 Q. Aside from these loans, have you been
3 involved at Brooklyn Federal in any other construction
4 loans or buildings loans?

5 A. Yes.

6 Q. From the bank's perspective, is it a
7 material breach of a building loan agreement for a
8 borrower not to advance funds as intended for
9 construction?

10 A. Yes.

11 MR. HOLLANDER: Objection.

12 MR. WALLACE: Objection to the
13 question.

14 MR. HOLLANDER: It calls for a legal
15 conclusion from the witness.

16 MR. DOCKWELL: I'm going to mark as
17 Exhibit 3 Affidavit of Stephen Weiss, dated
18 March 12th, 2012 and filed in this
19 litigation as document number 331 (handing).

20 (Whereupon, the reporter marked a copy
21 of Affidavit Of Stephen Weiss, as
22 Plaintiff's Exhibit 3, for identification as
23 of this date.)

24 Q. Have you seen this document before,
25 Miss Gallo (handing)?

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1 J. Gallo

2 Q. And what was your understanding of by whom
3 they had been hired?

4 A. D.A.B.

5 Q. Earlier, Mr. Hollander asked you some
6 questions in which he had stated that the Flintlock
7 contract had been "approved by the bank."

8 Are you aware of any contract involving
9 Flintlock that had been "approved by the bank"?

10 A. No.

11 Q. Had this contract that we're looking at
12 here, this Exhibit 1, been "approved by the bank"?

13 A. It could not have been approved (referring).

14 Q. If you could flip back to the first page of
15 this document?

16 A. (Complying.)

17 Q. Actually, page 2.

18 A. Okay (referring).

19 Q. I'm sorry, of the exhibit. We're still on
20 the contract.

21 A. I'm sorry (referring).

22 (Whereupon, at this time, the witness
23 and her counsel conferred.)

24 A. So, you want me to be on page --

25 Q. 2. It's a page that looks like that. It's

1 J. Gallo

2 the page right after the cover page (indicating).

A. Starting with number 1 (referring)?

4 Q. No. It's back further.

A. Got it (referring).

Q. Now, Section 3.3 reads, "The contractor
shall achieve substantial completion of the entire work
not later than 430 calendar days from the date of
commencement or as follows, and then there's a colon and
there is nothing that follows the colon.

11 Actually, I take that back. If you flip
12 over to the next page, there is a heading that says
13 Substantial Completion Date and that is blank.

14 Do you see that?

A. Yes, I do (referring).

16 Q. Do you recall ever having seen this
17 provision of this construction contract before?

18 A. Not really (referring).

19 Q. Do you recall ever discussing Section 3.3 of
20 this contract with anyone from D.A.B. Group or Flintlock?

21 A. No.

Q. Do you recall ever discussing with anyone from D.A.B. or Flintlock the number 430 calendar days?

24 A. No (referring).

25 Q. Do you recall having any discussions with